* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 246/2005

Reserved on : January 17, 2007
Pronounced on : May 28, 2007

RAM NARAIN ARORA ..... Petitioner
Through Mr. T.R. Sharma, Advocate

versus

STATE ..... Respondent
Through Ms. Richa Kapoor, Advocate

CORAM:

Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat

1. This revision petition challenges a judgment and order affirming the conviction and sentence imposed upon the petitioner for committing offences under Sections 18(a) (ii) r/w Section 27(a) (1) and Sections 18(c) read with Section 27(a) (ii) of the Drugs and Cosmetic Act, 1940 (hereafter "the Act") by the learned Additional Sessions Judge. On 3.6.1996, the Metropolitan Magistrate had convicted the petitioner of the offences and imposed the penalty of fine of Rs.

3,000/- on each count by order on sentence dated 24.6.1996.

2. Briefly the facts are that according to the complaint filed by the Drug Inspector then Delhi Administration, on 5.6.1971, 37 packets of "*Ved Nigrah Ras*" were recovered from the first accused Banarsi Dass while he was offering them for sale to M/s. Subhash & Co. That accused, in his statement, disclosed that the seized substances were received by him from the present petitioner, proprietor of M/s. Kanwar Ayurvedic Pharmacy. It was alleged that the petitioner did not possess the licence to manufacture, sell, stock or exhibit for sale the said drug "*Vedna Nigrah Ras*". The complainant alleged at after investigation, it transpired that the drug *"Vedna Nigrah Ras"* was misbranded, within the meaning of Section 17 (a) as it resembled and was likely to deceive, another drug with the same name *"Vedna Nigrah Ras"* Kanpur. The name, design of the label and the presentation of the drug manufactured by the accused petitioner was similar to that manufactured by the Kanpur firm which held the licence issued by the Government of U.P.

3. On the basis of complaint and evidence, the trial court proceeded and examined the materials which included depositions of five witnesses. The accused petitioner had *inter alia* taken the defence that he was manufacturing an Ayurvedic drug which disclosed on its packet the ingredients and all of the constituents which

were Ayurvedic as mentioned in the First Schedule of the Act. It was contended that the Drug Inspector was empowered to prosecute within a limited mandate under Section 21 could not have initiated the proceedings in respect of Ayurvedic drugs, including Sidha and Unani Drugs.

4. The trial judge recorded this part of the submission and also held that it was well established that the Drug Inspector cannot launch prosecution in respect of Ayurvedic Drugs. She also recorded a finding that the packet of "*Vedna Nigrah Ras*" manufactured by the accused firm mentioned all the ingredients of the drug as Ayurvedic and mentioned in the First Schedule of the Act that the label also talked about the drug being an Ayurvedic remedy. The trial court proceeded to analyse the etymological meaning of "remedy" and further analyse the testimony of PW-2 to say that he had read 34 books of Ayurvedic which did not include mention of "*Vedna Nigrah Ras*", which was not a name of the drug but a trade name adopted by the Kanpur firm for Allopathic drug being manufactured for sale by it. On the basis of the materials, the court concluded that the Kanpur firm which sold its product *"Vedna Nigrah Ras"* held a propriety licence for that purpose; the petitioner did not hold any license or permission, for both Ayurvedic or allopathic medication or drugs.

5. The other important contention raised by the petitioner was that *"Vedna Nigrah Ras"* was an Ayurvedic drug for which no licence was required and, therefore, could not be prosecuted. This too was negatived by the trial court. After considering all materials on record including the depositions led before the trial court such as PW-2, the deposition of PW-5 i.e. partner of Kanwal Ayurvedic Pharmacy, Kanpur who had stated that it had secured a licence, the appellate court too confirmed the findings of the trial court.

6. Learned counsel for the petitioner urged that both the courts fell into an error in concluding that the offences under Sections 18(a) (ii) r/w Section 27(a) (1) and Sections 18(c) r/w Section 27(a) (ii) of the Drug and Cosmetic Act, 1940 had been established. According to him, the products so manufactured and sold by the petitioner were Ayurvedic Drugs within the meaning of that expression; the Act was amended only in 1983 when the First Schedule was included. As a result since the concept of patent and propriety medicine came into existence only thereafter, "*Vedna Nigrah Ras*" had to be considered Ayurvedic medicine; it was entitled to be exempt from prosecution by the complainant. The contention that the concept of misbranding could not be imparted in relation to such Ayurvedic Drug too was reiterated.

7. I have considered the judgment of the courts below. While it is, no doubt, correct that Section 33-A of the Act exempts applicability of Chapter IV to Ayurvedic and Unani Drugs which are covered by Chapter IV(A), what is important is that these provisions were included in 1964, by Act 13 of 1964. Chapter IV (A) was introduced then; it relates to Ayurvedic Sidha and Unani Drugs. With the inclusion of the standards in relation to Ayurvedic, Unani and Sidha Drugs, likewise regulatory provisions for licencing etc. were enacted. The penalty for manufacture of such drugs in contravention of Chapter IV(A) is provided by Section 33-I. Section 33-D prohibits manufacture or sale of Ayurvedic and Unani Drugs except under certain conditions. Therefore, it became mandatory for anyone seeking to manufacture, sell or offer for sale such Ayurvedic drugs to apply and obtain licences, in accordance with provisions under Chapter IV-A before proceeding to so manufacture or sell such drugs. No material was adduced in the evidence by the petitioner to show that he had applied or obtained licences in that regard. Therefore, his contention that being an Ayurvedic drug, the product was exempt from the application of the Act as relevant provisions were introduced in 1983, has no merit.

8. As far as the other aspect is concerned, namely, lack of jurisdiction of the Drug Inspector and denial of misbranding, though in the first place the contention

appears attractive, a proper appreciation of the facts would show that the product which the petitioner was alleged to be selling *"Vedna Nigrah Ras"* was a proprietary allopathic Drug and not an Ayurvedic Drug. It was a clear case of misbranding drug within the definition provided for under Section 17 as found by the courts below. This contention, therefore, has to fail.

9. In view of the above, I find no merit in this revision petition. It is accordingly dismissed without any order as to costs.

S.RAVINDRA BHAT, J

May 28, 2007
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